

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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CC:FIP:B03 – PLR-140525-12

Date: December 19, 2012

### LEGEND:

Company =

Subsidiary =

Accounting Firm =

Law Firm =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to a letter dated September 5, 2012, submitted on behalf of Company and Subsidiary, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election under § 856(l) of the

Internal Revenue Code ("Code") to treat Subsidiary as a Taxable REIT Subsidiary ("TRS") of Company, effective as of Date 1.

### **FACTS**

Company was organized as a State X corporation on Date 2. Company elected to be taxed as a real estate investment trust ("REIT") on its timely filed federal income tax return for its taxable year ended Date 3. Company was formed to invest primarily in loans secured by mortgages on commercial and multifamily properties. Company formed Subsidiary as a State Y corporation on Date 1. Subsidiary acquires, holds, and sells interests in commercial and multifamily real estate.

Company retained Accounting Firm to prepare federal income tax returns for both Company and Subsidiary for the taxable year ended Date 4. A tax manager at Accounting Firm, charged with preparing the tax returns, asked to see a copy of the Form 8875. Company and Subsidiary are required to file Form 8875 to make an election under § 856(l) to treat Subsidiary as a TRS of Company. Company searched Company's files and failed to find a copy of the Form 8875. Company then contacted Law Firm which had been retained by Company to prepare all the documents to form Subsidiary as a TRS. No record was found that Law Firm prepared the Form 8875.

Company represents that it intended that Subsidiary qualify as a TRS from the date of Subsidiary's formation. Subsidiary's name includes the acronym "TRS." In addition, paragraph 10 of the ACTION BY UNANIMOUS WRITTEN CONSENT IN LIEU OF AN ORGANIZATIONAL MEETING BY THE BOARD OF DIRECTORS, a document that is dated Date 1, states "RESOLVED, FURTHER, that the Corporation shall be authorized to elect to qualify as a taxable REIT subsidiary under the Internal Revenue Code."

Company and Subsidiary have submitted in support of the requested extension the affidavit of the person initially responsible for preparing the Form 8875.

Company and Subsidiary make the following additional representations:

1. The request for relief was filed by Company and Subsidiary before the failure to make the regulatory election was discovered by the Internal Revenue Service.
2. Granting the relief will not result in Company or Subsidiary having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Company or Subsidiary would have had if the election had been timely made (taking into account the time value of money).
3. Company and Subsidiary did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of

the Code at the time Company and Subsidiary requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Company and Subsidiary did not choose to not file the election.

### **LAW AND ANALYSIS**

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, § 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, § 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (“Service”) announced the availability of Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. However, the effective date of the election depends upon when the Form 8875 is filed. The instructions further provide that the effective date on the form cannot be more than 2 months and 15 days prior to the date of filing the election, or 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies.

than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

### **CONCLUSION**

Based on the information submitted and representations made, we conclude that Company and Subsidiary have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Subsidiary as a TRS of Company, effective as of Date 1. Company and Subsidiary are granted a period of time not to exceed 60 calendar days from the date of this letter to file a Form 8875 to treat Subsidiary as a TRS of Company as of Date 1.

This ruling is limited to the timeliness of the filing of the Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Company otherwise qualifies as a REIT, or whether Subsidiary otherwise qualifies as a TRS under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of either Company or Subsidiary is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

K. Scott Brown  
Branch Chief, Branch 3  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter  
Copy for section 6110 purposes